MONTANA LEGISLATIVE HISTORY

Chapter 267 1987

Bill H _____ S 144 Original bill & history 1 C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	3-4	C	Hearing Date(s)	1-27	C
	3-5	C			C
		C			C
		C			C
Date Out	3-5	C	Date Out	1-2	

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

SENATE FINAL STATUS

2/21	2ND READING PASSED	29	19
2/23	3RD READING PASSED	32	17
	TRANSMITTED TO HOUSE		
2/24	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
3/13	HEARING		
3/27	COMMITTEE REPORT--BILL NOT PASSED		
3/28	ADVERSE COMMITTEE REPORT REJECTED	47	44
3/30	2ND READING CONCURRED AS AMENDED	64	34
3/30	3RD READING CONCURRED	65	33
	RETURNED TO SENATE WITH AMENDMENTS		
4/04	2ND READING AMENDMENTS CONCURRED	49	0
4/06	3RD READING AMENDMENTS CONCURRED	46	3
4/08	SIGNED BY PRESIDENT		
4/10	SIGNED BY SPEAKER		
4/10	TRANSMITTED TO GOVERNOR		
4/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 472 EFFECTIVE DATE: 4/15/87		

143 INTRODUCED BY BLAYLOCK
REQUIRE HIGH SCHOOL UNDER 100 AVERAGE NUMBER BELONGING TO APPLY FOR ISOLATION; FUNDING PROVISIONS

1/19	INTRODUCED		
1/19	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/20	FISCAL NOTE REQUESTED		
1/24	FISCAL NOTE RECEIVED		
2/02	HEARING		
2/16	ADVERSE COMMITTEE REPORT ADOPTED AS AMENDED	34	15

144 INTRODUCED BY BLAYLOCK
REVIEW OF SENTENCE OF A MENTALLY ILL OFFENDER CERTIFIED AS CURED
BY REQUEST OF DEPARTMENT OF INSTITUTIONS

1/19	INTRODUCED		
1/19	REFERRED TO JUDICIARY		
1/27	HEARING		
1/28	COMMITTEE REPORT--BILL PASSED AS AMENDED		
1/31	2ND READING PASSED	48	0
2/03	3RD READING PASSED	48	0
	TRANSMITTED TO HOUSE		
2/04	REFERRED TO JUDICIARY		
3/04	HEARING		
3/05	COMMITTEE REPORT--BILL CONCURRED AS AMENDED		
3/07	2ND READING CONCURRED	86	2
3/09	3RD READING CONCURRED	93	2
	RETURNED TO SENATE WITH AMENDMENTS		
3/20	2ND READING AMENDMENTS CONCURRED	49	0
3/21	3RD READING AMENDMENTS CONCURRED	41	0
3/24	SIGNED BY PRESIDENT		
3/25	SIGNED BY SPEAKER		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 267 EFFECTIVE DATE: 10/01/87		

BILL NO. 144

INTRODUCED BY Blaylock

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE DEPARTMENT OF INSTITUTIONS TO PETITION A SENTENCING COURT FOR REVIEW OF A SENTENCE OF A MENTALLY ILL OFFENDER; REMOVING LANGUAGE REQUIRING THAT THE OFFENDER BE CURED; AND AMENDING SECTION 46-14-312, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-14-312, MCA, is amended to read:

"46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which he was convicted did not suffer from a mental disease or defect as described in 46-14-311, it shall sentence him as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence him to be committed to the custody of the director of the department of institutions to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, provided the treatment of the individual and the protection of the public are provided for.

(3) A Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that the defendant ~~has been cured of~~ no longer suffers from the mental disease or defect. The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

-End-

INTRODUCED BILL
SB 144

CHAIRMAN--SEN. JOE MAZUREK
NORMAL SCHEDULE==> SITE: ROOM 325 DAYS: MON THRU FRI TIME: 10:00 A.M.
SECRETARY-MARY HUBER

BILL NO	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0119	1/16	1/23		DO PASS		1/23
WEEDING, CECIL			EXEMPT ALL INSURANCE POLICIES FROM 'PLAIN LANGUAGE IN CONTRACTS ACT'			
SB0121	1/16	1/29		PASS AS AMENDED		1/30
BROWN, ROBERT J.			FIREARMS LIABILITY CRITERIA			
SB0134	1/19	1/26		DO PASS		1/26
BECK, TOM			CONVEYING A DANGEROUS DRUG TO A PRISONER; SENTENCE			
SB0137	1/19	1/26		PASS AS AMENDED	off table 2/18 Tabled 2/19 Tabled 1/26	2/20
WEEDING, CECIL			FEE ADDED TO FINES TO SUPPORT LAW ENFORCEMENT ACADEMY			
SB0139	2/03	2/18		PASS AS AMENDED		2/19
SMITH, ED B.			RESTRICT SNOWMOBILE AREA OPERATORS' LIABILITY			
SB0144	1/19	1/27		PASS AS AMENDED		1/27
BLAYLOCK, CHET			REVIEW OF SENTENCE OF A MENTALLY ILL OFFENDER CERTIFIED AS CURED			
SB0152	1/20	1/27		ADVERSE REPORT	JUDICIARY	2/3
WALKER, MIKE			EXTEND TIME FOR FILING COMPLAINT WITH HUMAN RIGHTS COMMISSION			
SB0152	2/06			PASS AS AMENDED		2/3 2/16
WALKER, MIKE			EXTEND TIME FOR FILING COMPLAINT WITH HUMAN RIGHTS COMMISSION		Referred back 2/16	
SB0160	1/20	1/29		PASS AS AMENDED		2/3
MAZUREK, JOSEPH P.			REVISE GENERAL LAWS ON STATUTES OF LIMITATION			
SB0161	1/20	1/30		DO PASS		2/3
MAZUREK, JOSEPH P.			REPEAL SUNSET PROVISION OF TWO SUPREME COURT ASSOCIATE JUSTICE POSITIONS			
SB0164	1/21	1/30		DO PASS		2/4
GAGE, DELWYN			REIMBURSEMENT TO DEPARTMENT OF JUSTICE FOR EMPLOYEE TIME SPENT ON SUBPOENAS			

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 27, 1987

The fifteenth meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on January 27, 1987 by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All members were present.

CONSIDERATION OF SB 152: Senator Mike Walker of Senate District #20 introduced SB 152, which amends the statutes relating to filing of a person that has 180 days after an alleged unlawful discriminatory practice has occurred to file a complaint with the Commission. He said the bill extends the filing period to six months if the parties attempt to resolve the dispute by settlement, arbitration or any other method. He said one of his constituents had a problem with the Human Rights Commission. The constituent's 180 days elapsed in her case and she would like to have the amount of days be extended. He handed out an amendment from the Human Rights Commission (see Exhibit 1).

PROPONENTS: Gertrude R. Lindgren, representing herself, explained her case, which she presented to the Human Rights Commission, to the committee. She gave the committee a copy of her hearing in front of the Human Rights Commission and their response (see Exhibit 2, 3, and 4).

Kathi Mitchell, Personnel/EEO Officer from Missoula, supported the bill (see Exhibit 5).

OPPONENTS: LeRoy Schram, Montana University System, said he understood Ms. Lindgren situation. He said over $40,000 was spent on her case. He said the trouble with using these alternative procedures, like arbitration, is they are not binding in the Human Rights field. He said if the University, as the employer, goes into an arbitration which includes the Human Rights Division, the University system has to pay "back pay" and reinstate the employee. He said that is fine because the University System agreed in the contract, which is final and binding. He said the case law that has been built up on this subject says a contract isn't binding on the claimant, so the claimant can go back into the Human Rights Commission and they can find a new finding on the case. He said the amendments he presented would help cases like Ms. Lindgren's case because the grievance procedures would not end at the College President's Office (see Exhibit 6). He stated if you are going to encourage people to use these procedures then the procdures should be mandatory and mean something.

DISCUSSION ON SB 152: Senator Crippen asked if the Human Rights Commission

this statute, which is being appealed in this bill, was a statute to begin with. He stated the bill will help the merchants in civil law suit cases.

Don Ingels, Montana Chamber of Commerce, supported the bill.

OPPONENTS: None

DISCUSSION ON SB 104: Senator Blaylock questioned what is meant by civil suit. Mr. Dowling replied that the shoplifter can sue the merchants for accusing them.

Senator Mazurek asked if people only put things down when they know that they are being followed in a store. He felt some people might pick up something accidentally. He thought maybe that is why that statute is on the books. Mr. Capps told several stories of following people around the store. He said shoplifters know that if they don't have the stolen item on them when arrested, then they can go free.

Senator Crippen said he has seen a number of times people who bring in their own containers into the store. He asked if the merchants would go through their private containers and accuse them of stealing. Mr. Capps said merchants usually question someone if they go out the door or they are attempting to go out th door. Senator Crippen stated some people do actually forget about some things which they might have put in their pockets, so are we going to prosecute them. Mr. Dowling said that situation has already happen.

Senator Halligan said no one should be able to touch or stop anyone until that person leaves the building.

Senator Blaylock asked how this bill will help the merchant if the arresting officer refuses to arrest a suspect of shoplifting because the item was not on the person when the officer arrived. Mr. Dowling responded that the statute has been uses as an instuction, nothing more.

Senator Mazurek inquired if the statute right now is forcing the jury to get into the suspected offender's mind. Mr. Dowling said the "mental" part of this statute is the main problem because we don't know people's real intent.

Senator Pinsoneault closed on SB 104.

CONSIDERATION ON SB 144: Senator Chet Blaylock of Billings opened the hearing on SB 144, which amends the provisions relating to sentencing of a defendant when mental disease or defect is an issue as to a state of mind which is an element of an offense. He stated if a defendant is found to be suffering from a mental disease or defect at the time of

commission of a crime, he must be committed to the Department of Institutions to be placed in an appropriate institution for custody, care, and treatment.

PROPONENTS: Curt Chisholm, Department of Institutions, stated that there are three dispositions available to the sentencing court when they are dealing with a defendant that could have some mental problem. He said the first disposition is to remand the custody of the defendant to the State Hospital on the basis that the defendant has been judged not guilty because of a mental disease. He said the second disposition is to remand the defendant to the State Hospital because the defendant lacks fitness to continue the trial. He said the third disposition is the defendant is found guilty, whether suffering from a mental defect or not, and is sentenced to the Department of Institutions to be placed in the State Hospital for a timed period. He explained the problem with this last disposition is many of these people that were judged under the third disposition don't need to be in the State Hospital. He said the standard on a mental health professional is very high, because to let a person out of the State Hospital the state mental health professional has to prove the person is cured. He commented that it is pretty tough to say someone is completely cured of a mental problem. He gave the committee an amendment which helped lower the standard (see Exhibit 8).

OPPONENTS: None

DISCUSSION ON SB 144: Senator Pinsoneault felt the Hospital was letting people leave the hospital because they need room and he felt it was unsafe for society. Mr. Chisholm replied that the people that are considered for release are people that have been screened very carefully by the Hospital's professionals and they feel some of these people were sent to the wrong place to begin with and need releasing or placed in another facility. He said the ultimate decision of where these people will go is still with the judges.

Senator Mazurek questioned if the county attorney is involved in the dispositions. Mr. Chisholm said the Hospital notifies the county attorney about a disposition, but they are not mandated to go.

Senator Halligan felt the amendment Mr. Chisholm presented should have an "and" in it instead of an "or" because a danger to himself and to others go hand in hand. Mr. Chisholm said the definition came from the criminal code. He felt some people might have a problem with one or the other, because some will not hurt themselves, but they could hurt others.

Senator Blaylock closed.

The committee adjourned the hearings to do some executive action.

ACTION ON SB 144: Curt Chisholm discussed his amendment. Senator

Halligan thought "and" should be in the amendment because it would make the mental professional of the State Hospital carefully review some patient's case. Mr. Chisholm explained that there are some people in the Hospital right now that should have never been put there, so the State Hospital is just housing these people. He echoed his statement about the court is the only entity that release these people from the Hospital. Senator Beck asked if a person did not belong at the State Hospital, but was "off balance", could the State Hospital transfer the person to the Warm Springs Hospital. Mr. Chisholm said he could not unless the court approved the matter, but he said this bill would help to move these people from one institution to another more smoothly. Senator Blaylock moved the Chisholm amendment with "or" in the amendment. Senator Brown suggested to put "either or" in the amendment. Senator Blaylock said he understood that many of these people that could be released are not completely cured and probably will never be. Senator Mazurek stressed that many of these people that could be released will not go free on the streets, but will be sent to prison. Mr. Chisholm agreed with Senator Mazurek. He said many of these people could be doing time in prison as well as they are doing at the Hospital. Senator Mazurek said the amendment does change the statute in the criminal code. Mr. Chisholm said he got the language from the criminal code. The motion carried.

Senator Blaylock moved the bill DO PASS AS AMENDED. The motion carried.

ACTION ON SB 104: Senator Halligan said the bill will give the merchants more power in dealing with shoplifters. Senator Pinsoneault stated that the passage of this bill will not allow concealment to cover the truth of a shoplifting situation. Senator Mazurek wanted more history on the statute 46-6-504.

ACTION ON SB 51: The committee talked of having a subcommittee for the SB 51. The main discussion dealt with a threshold percentage. The committee did not take action.

The committee adjourned at 12:00 p.m.

Chairman

ROLL CALL

Judiciary COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date Jan. 2 '87

NAME	PRESENT	ABSENT	EXCUSED
Senator Joe Mazurek, Chairman	X		
Senator Bruce Crippen, Vice Chairman	X		
Senator Tom Beck	X		
Senator Al Bishop	X		
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Jack Galt	X		
Senator Mike Halligan	X		
Senator Dick Pinsoneault	X		
Senator Bill Yellowtail	X		

Each day attach to minutes.

SENATE JUDICIARY
EXHIBIT NO. 8
DATE Jan. 27, 1987
BILL NO. SB 144

S.B. 144

P.2, L.11 after defect, insert:
"or is not considered a danger to himself or others."

DATE Jan. 27th

COMMITTEE ON _____

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
John Bowlin	Mont. Farm Bureau	104	—	
Gertrude F. Lindgren	Self Mont. Nat'l Dist Assn	152	✓	
Lund Copps	Shopping Stores	104	✓	
WE Stevens	MT Food Dist Assn			
LeRoy H. Schramm	MT. Univ System			
George Allen	MT. Retail Assn	104	✓	
Dan Thomas	Sen Bob Williams		✓	
Anne MacIntyre	Human Rights Commission	152		
Don Engels	MT. Chamber of Commerce	104	✓	
BERT CHISHOLM	DEPT OF EDUCATION	144	✓	

(Please leave prepared statement with)

STANDING COMMITTEE REPORT

January 27 19 38

MR. PRESIDENT

We, your committee on SENATE JUDICIARY

having had under consideration SENATE BILL No. 144

first reading copy (white color)

Review of sentence of a mentally ill offender certified as cured.

Respectfully report as follows: That SENATE BILL No. 144

BE AMENDED AS FOLLOWS:

1. Page 2, line 11.
Following: "defect"
Insert: "or is not considered a danger to himself or others"

AND AS AMENDED

DO PASS

~~XXXXXXXXX~~
~~DO NOT PASS~~

Chairman.

rm CS-32
v. 1985

STATUS SHEET

50th LEGISLATIVE SESSION

JUDICIARY COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CONSIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CONCURRED IN DATE	BE NOT CONCURRED IN DATE	BE CONCURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
102		3/6/87									
104		3/12/87						3/13/87			
108		3/12/87							3/17/87		
112		3/5/87	3/5/87					3/5/87			
114		3/12/87						3/17/87			
119		3/9/87						3/10/87			
121		3/16/87						3/23/87			
134		3/6/87	3/6/87					3/6/87			
139		3/~~12~~20/87	3/23/87							3/26/87	
144		3/4/87	3/5/87							3/5/87	
152		3/13/87						3/23/87			
160		3/13/87								3/23/87	
164		3/13/87						3/23/87			
173		3/13/87	tabled 3/23/87						reconcidered 3/27/87		

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

SENATE BILL NO. 144

INTRODUCED BY BLAYLOCK

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE DEPARTMENT OF INSTITUTIONS TO PETITION A SENTENCING COURT FOR REVIEW OF A SENTENCE OF A MENTALLY ILL OFFENDER; REMOVING LANGUAGE REQUIRING THAT THE OFFENDER BE CURED; AND AMENDING SECTION 46-14-312, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-14-312, MCA, is amended to read:

"46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which he was convicted did not suffer from a mental disease or defect as described in 46-14-311, it shall sentence him as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence him to be committed to the custody of the director of the department of institutions to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, provided the treatment of the individual and the protection of the public are provided for.

(3) A Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that the defendant ~~has been cured of~~ no longer suffers from the mental disease or defect OR IS NOT CONSIDERED A DANGER TO HIMSELF OR OTHERS. The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

-End-

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 4, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 4, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members present with the exception of Rep. Hannah.

SENATE BILL NO. 57: Senator Halligan, District No. 29, stated this bill came from the sheriff's office and he referred to Katherine J. Good to explain the bill.

PROPONENTS:

Katherine J. Good, from the Missoula County Sheriff's Department, testified this bill is presented to revise and update the civil process codes and regulations. The first section of the bill amends the deadline for paying sheriff fees to the county treasury from the first Monday of the month to the tenth day of the month. The third section relates to a writ of execution, and the service thereof, and specifies a 60 day return deadline. Section four relates to a writ of execution, also, which would allow the sheriff's office the option of returning a writ of execution to the officer, agent, or attorney directly to the court as is required under the codes now. The common practice, today, regarding the returned writ of execution and the one attorneys prefer, is that the sheriff's office is to make the dispursement of the recovery to them which is then easier to disperse funds and make the return to the same place. The attorneys would be responsible for returning the documents to the court. The current code does not allow this option. She explained section five changes the notice of sale posting requirements. She felt the word "township" should be changed to "county". Sections six, seven, eight, and nine amends the abandon vehicle codes to remove the preservation requirements and changes it to just a storage requirement, This code would also change the requirement for publication for the notice of sale for abandoned vehicles to one week prior to the sale. Section ten changes the lien publication requirement to be consistent with the sale of personal property under court order making the publication requirement one week before the sale. Section 11 is a new code that allows the department to request a security for costs under a claim and delivery order.

In those cases, the department would be willing to do custody investigations for a reasonable fee as the bill stated, "to be determined by the court".

No further proponents and no opponents.

Senator Jacobson closed the hearing on Senate Bill No. 256.

SENATE BILL NO. 144: Senator Blaylock, District No. 43, stated under the criminal code, those cases where a felony is involved and a mental disease or defect is raised as a defense in the case, the court has three ways to sentence a defendant. First, the defendant can be found to be unfit to proceed at a hearing because of the mental disease or defect and be placed in an appropriate institution. Secondly, the defendant can be found not guilty by reason of mental disease or defect and the court can order him committed to the custody of the superintendent of the Montana State Hospital for custody, care, and treatment. Thirdly, the defendant, after being found guilty, can be sentenced for treatment to the director of the Department of Institutions and placed in an appropriate institution for definite period of time, not to exceed the maximum term of imprisonment that could be imposed under other sections of the criminal code. Under the first two types of sentencing, the Department of Institutions can have standing before the court. Under the third type of sentencing, the department can not have court standing, only the defendant can. This has been found to raise great difficulties. The department would like standing, to allow its' professional people to come before the court to say the defendant has reached that point where he can be sent back to prison if he still has time to serve.

PROPONENTS: Curt Chisholm, Department of Institutions, stated he supported the bill. He did feel it was important to point out the department needs the standing before the court in order to go back and state the individual no longer needs the services of the Montana State Hospital and recommend to the court the defendant served the remaining part of his sentence in the Montana State Prison or the defendant be paroled. he also stated the bill changed the standard that allowed the department's professionals to go back to the court. The law currently states the professional must prove the defendant is cured. This is a tough standard to meet, especially when you are dealing with mental disease or defect. The department suggested the language be changed and used the same language that is used in the civil code. He agreed with proposed amendments that the Attorney General's office would submit.

Kim Kradolfer, Assistant Attorney General for the state of Montana, submitted proposed amendments. (Exhibit A). She urged support of the bill with the proposed amendments.

No further proponents, no opponents and no questions.

Senator Blaylock closed the hearing on Senate Bill No. 144.

EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 57: Rep. Giacometto moved SB 57 Be Concurred In. Rep. Eudaily questioned the language on page 13, section 11, regarding where the money was coming from. Rep. Mercer stated it would be the party who was seeking execution. Rep. Eudaily wondered if there would be any costs the counties might have to incur. Rep. Hannah stated the requirements under the bill were statutory requirements and did it mean we now had to pay the sheriff to do those things in section 11. Rep. Mercer stated Rep. Hannah's understanding was fairly accurate. He stated currently, if the sheriff is asked to sell some property of someone you had a judgment against, the sheriff withheld from the proceeds whatever his costs were. The bill is saying, the sheriff is not sure if he would have enough proceeds from the sale to cover his costs and you have made the judgment to execute on the property so, he now wants a bond. The sheriff does not want to get stuck for the costs and this should eliminate the sheriff from ever getting stuck. Rep. Hannah felt this would also eliminate many of the smaller judgments from being acted upon because the sheriff would feel it was not worth it to him to collect it. Rep. Hannah moved to strike Section 11 from the bill. Rep. Darko felt the language used should be enough. Rep. Giacometto stated he felt Rep. Hannah was correct. Question was called and voice vote was taken on the original motion. Thirteen members voted in favor of the motion and two voted in opposition. The two voting in opposition were Rep. Eudaily and Rep. Hannah. SB 57 BE CONCURRED IN.

ACTION ON SENATE BILL NO. 256: Rep. Daily moved Be Concurred In. Question was called and a voice vote was taken. The motion carried unanimously. SB 257 BE CONCURRED IN.

ADJOURNMENT: There being no further business to come before this committee, the hearing was adjourned at 9:50 a.m.

Earl Lory

Earl Lory, Chairman

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 4, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)		✓	
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)	✓		
EARL LORY (R)	✓		

CS-30

EXHIBIT 4
DATE 3-4-87
SB # 144

PROPOSED AMENDMENT TO SB 144, FIRST READING IN THE HOUSE

asst. attny general

1. Page 2, lines 9 through 11

STRIKE: "that the defendant ~~has been cured of~~ no longer suffers from the mental disease or defect OR IS NOT CONSIDERED A DANGER TO HIMSELF OR OTHERS."

INSERT: " : (a) that the defendant no longers suffers from a mental disease or defect;

(b) that the defendant's mental disease or defect no longer renders him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law; or

(c) defendant suffers from a mental disease or defect which makes him a danger to himself or others but either there is no treatment available for his mental disease or defect or he refuses to cooperate with treatment."

VISITORS' REGISTER

JUDICIARY COMMITTEE

SENATE BILL NO. 144 DATE March 4, 1987

SPONSOR

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Kim Kradolfer	Attorney General	X	
CURT CHISHOLM	DCI TJTONS	X	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
50TH LEGISLATIVE SESSION
HOUSE OF REPRESENTATIVES

March 5, 1987

The meeting of the Judiciary Committee was called to order by Chairman Earl Lory on March 5, 1987, at 8:00 a.m. in Room 312-D of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Hannah and Rep. Brown who were absent.

SENATE BILL NO. 88: Senator Van Valkenburg, District No. 30, stated this was a straight forward bill that did two things. It changed the definition of aggravated burglary and extends the maximum prison term for the commission of the offense of burglary. The definition of aggravated burglary as it currently exists in the law, requires not only that the individual committed the offense of burglary but also the intent of the individual in breaking into a home or business was to commit a felony within. He must also have a weapon in his possession or injure someone in the course of the entry or flight from the occupied structure. He explained the County Attorney's Association prepared the bill in response to some specific requests from the Flathead area. The requirement of having to prove the intent to commit a felony upon entry was a requirement that the law should not have. The real problem associated with an aggravated burglary was the fact that the individual had a weapon or hurt someone in the course of committing the offense and not what their intent was in terms of going into a residence. He also pointed out the maximum term of burglary was increased in the bill. The term was amended from 10 to 20 years. A person convicted of the offense of aggravated burglary shall be imprisoned in the state prison for any term not to exceed 40 years or be fined an amount not to exceed $50,000.00, or both.

PROPONENTS: Mark Roscoe, representing the Attorney General's Office and the County Attorney's Association, stated they were in support of the bill primarily because their experience left them to conclude that actually the burglars are the point men in the entire cycle that takes place in stolen property. He pointed out they also supported the bill because it should not make any difference if a person intended to commit a misdemeanor theft or felony theft when they break into someone's home and do harm with a weapon.

There were no further proponents and no opponents.

district court review those cases and he explained it arose as a result of Mike Young and John Nordy who use to be in the Attorney General's office during a Workmans' Compensation scandal as a response to that. Rep. Giacometto asked Mr. Maynard who in the department made the decision whether the award is $10,000.00 or $5,000.00 and he stated that it was his decision.

Senator Mazurek closed the hearing on Senate Bill No. 112.

EXECUTIVE SESSION:

ACTION ON SENATE BILL NO. 112: Rep. Cobb moved that SB 112 Be Concurred In. Question was called and a voice vote was taken. The motion carried unanimously. SB 112, BE CONCURRED IN.

ACTION ON SENATE BILL NO. 88: Rep. Mercer moved that SB 88 Be Concurred In. Question was called and a voice vote was taken. All members voted in favor of the motion with the exception of Rep. Cobb. SB 88 BE CONCURRED IN.

ACTION ON SENATE BILL 144: Rep. Bulger moved the Attorney General's Office amendments. Question was called and a voice vote was taken. The motion unanimously carried in favor of the amendments. Question was called on the bill that it be Concurred In As Amended. A voice vote was taken and the motion carried unanimously. SB 144 BE CONCURRED IN AS AMENDED.

ACTION ON SENATE BILL NO. 77: Rep. Daily moved that SB 77 Be Concurred In. Question was called and a voice vote was taken. Ten members voted in favor of the motion. SB 77 BE CONCURRED IN.

ADJOURNMENT: There being no further business to come before this committee, the hearing was adjourned at 10:45 a.m.

Earl Lory

Earl Lory, Chairman

DAILY ROLL CALL

JUDICIARY COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date March 5, 1987

NAME	PRESENT	ABSENT	EXCUSED
JOHN MERCER (R)	✓		
LEO GIACOMETTO (R)	✓		
BUDD GOULD (R)	✓		
AL MEYERS (R)	✓		
JOHN COBB (R)	✓		
ED GRADY (R)	✓		
PAUL RAPP-SVRCEK (D)	✓		
VERNON KELLER (R)	✓		
RALPH EUDAILY (R)	✓		
TOM BULGER (D)	✓		
JOAN MILES (D)	✓		
FRITZ DAILY (D)	✓		
TOM HANNAH (R)		✓	
BILL STRIZICH (D)	✓		
PAULA DARKO (D)	✓		
KELLY ADDY (D)	✓		
DAVE BROWN (D)		✓	
EARL LORY (R)	✓		

CS-30

STANDING COMMITTEE REPORT

HOUSE B MARCH 5, 19 87

Mr. Speaker: We, the committee on JUDICIARY

report SENATE BILL NO. ~~[illegible]~~ 144

☐ do pass
☐ do not pass

XX ☐ be concurred in
☐ be not concurred in

XX ☐ as amended
☐ statement of intent attached

Earl Lory
Chairman

1. Title, lines 7 and 8.
Strike: "REMOVING" on line 7 through "CURE" on line 8
Insert: "CHANGING WHAT MUST BE CERTIFIED BEFORE A PETITION MAY BE FILED"

2. Page 2, lines 9 through 11.
Strike: "the defendant" on line 9 through "The" on line 11
Insert: ":

(a) the defendant no longer suffers from a mental disease or defect;

(b) the defendant's mental disease or defect no longer renders him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law; or

(c) the defendant suffers from a mental disease or defect that makes him a danger to himself or others, but either there is no treatment available for his mental disease or defect or he refuses to cooperate with treatment.

(4) The"

ASB144/JM/JM2

THIRD reading copy (BLUE color)

SB 0144/03

SENATE BILL NO. 144

INTRODUCED BY BLAYLOCK

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW THE DEPARTMENT OF INSTITUTIONS TO PETITION A SENTENCING COURT FOR REVIEW OF A SENTENCE OF A MENTALLY ILL OFFENDER; ~~REMOVING--LANGUAGE REQUIRING--THAT--THE-OFFENDER-BE-CURED~~ CHANGING WHAT MUST BE CERTIFIED BEFORE A PETITION MAY BE FILED; AND AMENDING SECTION 46-14-312, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-14-312, MCA, is amended to read:

"46-14-312. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which he was convicted did not suffer from a mental disease or defect as described in 46-14-311, it shall sentence him as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence him to be committed to the custody of the director of the department of institutions to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, provided the treatment of the individual and the protection of the public are provided for.

(3) A Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence if the professional person certifies that ~~the--defendant--has--been cured-of~~ no-longer-suffers-from ~~the-mental-disease-or-defect OR-IS-NOT-CONSIDERED-A-DANGER-TO-HIMSELF-OR-OTHERS.--The~~:

(A) THE DEFENDANT NO LONGER SUFFERS FROM A MENTAL DISEASE OR DEFECT;

(B) THE DEFENDANT'S MENTAL DISEASE OR DEFECT NO LONGER RENDERS HIM UNABLE TO APPRECIATE THE CRIMINALITY OF HIS CONDUCT OR TO CONFORM HIS CONDUCT TO THE REQUIREMENTS OF LAW; OR

(C) THE DEFENDANT SUFFERS FROM A MENTAL DISEASE OR DEFECT THAT MAKES HIM A DANGER TO HIMSELF OR OTHERS, BUT EITHER THERE IS NO TREATMENT AVAILABLE FOR HIS MENTAL DISEASE OR DEFECT OR HE REFUSES TO COOPERATE WITH TREATMENT.

(4) THE sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision must be equal

to that of the original sentence. The professional person shall review the defendant's status each year."

-End-